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9 **ATTORNEYS FOR Defendants**  
10 **HEDIA PETROLEUM, INC., dba**  
11 **CAMPBELL UNION 76 and**  
12 **BOZORGHADAD TRUST**

13 **UNITED STATES DISTRICT COURT**  
14 **NORTHER DISTRICT OF CALIFORNIA**

15 ERNESTINA SALDANA-NEILY,  
16 Plaintiffs,

17 vs.

18 TACO BELL OF AMERICA, INC.;  
19 DOROTHY M. HIURA TRUST; and  
20 DOES 1-25; HEDIA PETROLEUM INC.,  
21 dba CAMBELL UNION 76;  
22 BOZORGHADAD TRUST; AND DOES  
23 26-50-Inclusive,

24 Defendants.

No. C 04-4571 MJJ (MEJ)

STIPULATION [AND ~~PROPOSED~~  
~~ORDER~~] FOR A GOOD FAITH  
SETTLEMENT DETERMINATION

25 **WHEREAS** plaintiff ERNESTINA SALDANA-NEILY ("Plaintiff") commenced the above-  
26 entitled action on October 28, 2004 ("The Action") against defendants TACO BELL OF  
27 AMERICA, INC., DOROTHY M. HIURA TRUST, HEDIA PETROLEUM INC., d/b/a CAMBELL  
28 UNION 76, and BOZORGHADAD TRUST ("Defendants"); and

**WHEREAS** HEDIA PETROLEUM INC., d/b/a CAMBELL UNION 76 and  
BOZORGHADAD TRUST are hereinafter referred to collectively as "The Union 76 Defendants";  
and

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**FILED**

DEC 09 2005

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

1       **WHEREAS** Plaintiff alleges in The Action, *inter alia*, that she was unable to gain access to  
2 the women's restroom at a Taco Bell restaurant in Campbell, using her "powerchair," because the  
3 restroom allegedly was not accessible to disabled individuals; and

4       **WHEREAS** Plaintiff alleges, in The Action, *inter alia*, that after being unable to use the Taco  
5 Bell restroom, she went to a nearby Union 76 service station (Campbell Union 76) where she alleges  
6 her path of ingress to, and egress from, the unisex restroom at the service station was blocked; and

7       **WHEREAS** Plaintiff alleges, *inter alia*, that she was unable to enter the restroom at the  
8 Campbell Union 76 station in time to avoid a urinary incident; and

9       **WHEREAS** Plaintiff contends that Defendants violated certain provisions of the Americans  
10 With Disabilities Act and certain provisions of California law providing for disabled access in public  
11 accommodations; and

12       **WHEREAS** Defendants deny, *inter alia*, Plaintiff's factual allegations and Plaintiff's legal  
13 contentions regarding violations of law regarding disabled access in public accommodations; and

14       **WHEREAS** Taco Bell alleges that it is not readily achievable to make the women's restroom  
15 accessible to persons who use wheelchairs for mobility; and

16       **WHEREAS** The Union 76 Defendants attended three settlement conferences supervised by  
17 the Honorable Maria-Elena James, United States Magistrate Judge (on June 14, 2005, July 29, 2005  
18 and October 26, 2005); and

19       **WHEREAS** at the conclusion of the third settlement conference, on October 26, 2005,  
20 Plaintiff and The Union 76 Defendants reached an amicable resolution of Plaintiff's claims for  
21 compensatory damages against The Union 76 Defendants, which resolution requires payment to  
22 Plaintiff, by The Union 76 Defendants, of the sum of Ten Thousand dollars (\$10,000.00)  
23 ("Settlement Sum"), subject to certain specifically enumerated conditions which are recited in the  
24 "Consent Decree and Order as to Campbell Union 76, Hedia Petroleum Inc. and Bozorghadad  
25 Trust," filed on November 2, 2005, as Docket No. 64; one such condition is that the Court determine  
26 the compensatory damages settlement between Plaintiff and The Union 76 Defendants, to be in  
27 "good faith" within the meaning of California Code of Civil Procedure §877.6; and

28 ///

1       **WHEREAS** Plaintiff and The Union 76 Defendants have further agreed that the issue of the  
2 amount of plaintiff's attorney fees, litigation expenses and costs recoverable from The Union 76  
3 Defendants, if any, shall be determined either through further negotiation or by the Court; and

4       **WHEREAS** California Code of Civil Procedure §877.6 sets forth the guidelines for  
5 determining the good faith nature of a settlement between a plaintiff and alleged tortfeasors, in  
6 pertinent part, as follows:

7       (a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors  
8 or co-obligors on a contract debt shall be entitled to a hearing on the issue of good faith of a  
9 settlement entered into by the plaintiff or other claimant and one or more alleged tort-feasors  
10 or co-obligors . . .

11       (b) The issue of the good faith settlement may be determined by the court on the basis of  
12 affidavits served with the notice of hearing, and any counter-affidavits filed in response, or the  
13 court may, in its discretion, receive other evidence at the hearing . . .; and

14       **WHEREAS** the California Supreme Court has stated that the purpose behind Section 877.6  
15 is to achieve a balance between the objectives of "equitable sharing of costs among the parties  
16 involved" and "the encouragement of settlements." See *Tech-Bilt v. Woodward Clyde & Assoc.*, 38  
17 Cal.3d 488, 494 (1985); and

18       **WHEREAS** in *Tech-Bilt*, the Supreme Court acknowledged that the trial court should be  
19 allowed, among other things, to inquire "whether the amount of the settlement is within the  
20 reasonable range of the settling tortfeasor's proportional share of comparative liability for the  
21 plaintiff's injuries." *Id.* at 499; and

22       **WHEREAS** *Tech-Bilt* identifies several factors which should be taken into account in  
23 determining good faith, including: (1) rough approximation of plaintiffs' total recovery and the  
24 settler's proportionate liability; (2) the amount paid in settlement; (3) the allocation of settlement  
25 proceeds among plaintiffs; and (3) a recognition that a settler should pay less in settlement than he  
26 would if he were found liable at trial. *Id.* at 499. Other relevant factors include the financial  
27 conditions and insurance policy limits of settling defendants, as well as the existence of collusion,  
28 fraud or tortious conduct and potential prejudice to the interests of non-settling defendants; and

1       **WHEREAS** the Union 76 Defendants represent that Settlement Sum was arrived at through  
2 extensive negotiations between the parties and facilitated by the Court; and

3       **WHEREAS** the Union 76 Defendants represent that they are agreeing to pay the Settlement  
4 Sum in order to end this expensive and protracted litigation without incurring further investigative,  
5 expert and trial preparation costs; and

6       **WHEREAS** settlement of Plaintiff's claims against The Union 76 Defendants, for the  
7 Settlement Sum, is not grossly disproportionate in light of the amount of Plaintiff's potential  
8 damages; and

9       **WHEREAS** The Union 76 Defendants should pay less in settlement than they would pay if  
10 found liable at trial; and

11       **WHEREAS** no collusion, fraud or tortious conduct underlies the settlement. The settlement  
12 was arrived at through extensive, judicially-supervised negotiations. At all times, Plaintiff and The  
13 Union 76 Defendants sought to reach an agreement that would fairly resolve the matter and that  
14 would not seek to injure any other party to the litigation.

15       **WHEREAS** the settlement is based on information available to the Parties at the time of  
16 settlement; and

17       **WHEREAS** based upon all of the foregoing, the Settlement Sum is well within the "ballpark"  
18 of The Union 76 Defendants' potential liability.

19       **IT IS THEREFORE STIPULATED**, by and between the parties, through their respective  
20 counsel, that the Court may enter an order:

21       1.       Determining that the settlement between Plaintiff and The Union 76 defendants was  
22 made in "good faith" within the meaning of California Code of Civil Procedure §877.6 and *Tech-Bilt*  
23 *v. Woodward Clyde & Assoc.*, 38 Cal. 3d 488 (1985); and

24       ///

25       ///

26       ///

27       ///

28       ///

2. Barring any claims against The Union 76 Defendants for total equitable indemnity, equitable comparative contribution and equitable partial indemnity based on comparative contribution, equitable partial contribution based on comparative negligence or comparative fault, or implied contractual indemnity.

Dated: November 29, 2005

LAW OFFICES OF PAUL L. REIN

By: 

Paul L. Rein  
Attorneys for Plaintiff  
Ernestina Saldana-Neily

Dated: November \_\_, 2005

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

By: \_\_\_\_\_

Jeffrey H. Dasteel  
Attorneys for Defendant  
Taco Bell of America, Inc.

Dated: November \_\_, 2005

MCMANIS, FAULKNER & MORGAN

By: \_\_\_\_\_

William Faulkner  
Attorneys for Defendant  
Dorothy M. Hiura Trust

Dated: November \_\_, 2005

CODDINGTON, HICKS & DANFORTH

By: \_\_\_\_\_

Richard G. Grotch  
Attorneys for Defendants  
Hedia Petroleum, Inc. d/b/a Campbell  
Union 76 and Bozorghadad Trust

2. Barring any claims against The Union 76 Defendants for total equitable indemnity, equitable comparative contribution and equitable partial indemnity based on comparative contribution, equitable partial contribution based on comparative negligence or comparative fault, or implied contractual indemnity.

Dated: November \_\_, 2005

LAW OFFICES OF PAUL L. REIN

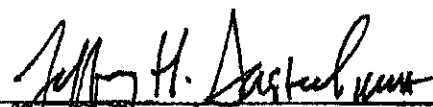
By:

Paul L. Rein  
Attorneys for Plaintiff  
Ernestina Saldana-Neily

Dated: November 5, 2005

SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM, LLP

By:

  
Jeffrey H. Dasteel  
Attorneys for Defendant  
Taco Bell of America, Inc.

Dated: November \_\_, 2005

MCMANIS, FAULKNER & MORGAN

By:

William Faulkner  
Attorneys for Defendant  
Dorothy M. Hiura Trust

Dated: November \_\_, 2005

CODDINGTON, HICKS & DANFORTH

By:

Richard G. Grotch  
Attorneys for Defendants  
Hedia Petroleum, Inc. d/b/a Campbell  
Union 76 and Bozorghdad Trust

1 2. Barring any claims against The Union 76 Defendants for total equitable indemnity,  
2 equitable comparative contribution and equitable partial indemnity based on comparative  
3 contribution, equitable partial contribution based on comparative negligence or comparative fault,  
4 or implied contractual indemnity.

5 Dated: November \_\_, 2005

LAW OFFICES OF PAUL L. REIN

6  
7  
8 By:

Paul L. Rein  
Attorneys for Plaintiff  
Ernestina Saldana-Neily

9  
10 Dated: November \_\_, 2005

SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM, LLP

11  
12  
13  
14 By:

Jeffrey H. Dasteel  
Attorneys for Defendant  
Taco Bell of America, Inc.

15  
16 Dated: November 14, 2005

MCMANIS, FAULKNER & MORGAN

17  
18  
19 By: William Faulkner

William Faulkner  
Attorneys for Defendant  
Dorothy M. Hiura Trust

20  
21 December 6,  
22 Dated: November, 2005

CODDINGTON, HICKS & DANFORTH

23  
24  
25 By: Richard G. Grotch

Richard G. Grotch  
Attorneys for Defendants  
Hedia Petroleum, Inc. d/b/a Campbell  
Union 76 and Bozorghadad Trust

**[PROPOSED] ORDER**

The Court, having reviewed the foregoing stipulation,

IT IS HEREBY ORDERED as follows:

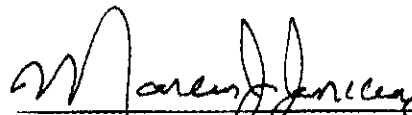
1. The settlement between Plaintiff and The Union 76 Defendants is determined to have been made in "good faith" within the meaning of California Code of Civil Procedure §877.6 and *Tech-Bilt v. Woodward Clyde & Assoc.*, 38 Cal. 3d 488 (1985); and

2. Any claims against The Union 76 Defendants for total equitable indemnity, equitable comparative contribution and equitable partial indemnity based on comparative contribution, equitable partial contribution based on comparative negligence or comparative fault, or implied contractual indemnity, are barred.

IT IS SO ORDERED.

Dated: November 2, 2005

12/8/2005

  
Honorable Martin J. Jenkins  
United States District Judge